Supreme Court of the United States has repeatedly affirmed that because legislation is special it does not therefore deny the equal protection of the laws. *Missouri Pac. R. R.* v. *Humes*, 115 U. S. 512; *Barbier* v. *Connolly*, 113 U. S. 27; *Missouri R. R.* v. *Mackey*, 127 U. S. 205; *Minnesota R. R.* v. *Beckwith*, 129 U. S. 27. In *Soon Hing* v. *Crowley*, 113 U. S. 704, it was said, "The specific regulations for one kind of business, which may be necessary for the protection of the public, can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws." See also an able dissenting opinion in *State* v. *Loomis*, 115 Mo. 307.

Is a Trust Invalidated by Lack of Beneficiaries? — A recent Alabama case, *Festorazzi et al.* v. *St. Joseph's Church of Mobile et al.*, 18 So. Rep. 394 (Ala.), raises again the question involved in *Morice* v. *Bishop of Durham*, 10 Vesey, 521, whether under a bequest for an indefinite object the trustee shall be allowed to carry out the testator's wishes. The court decreed that the trustees of a bequest "to be used in solemn masses for the repose of my soul," should not perform the trust, but that the sum must be held in trust for the testator's next of kin. This accords with *Morice* v. *Bishop of Durham*, and decisions in several of the American States, particularly New York, where the doctrine was made famous by the ruling on the "Tilden Trust." The doctrine obviously is based on the fact that there is nobody who can compel performance according to the terms of the will, and therefore there is no legal trust. But under this doctrine the testator's wishes are utterly defeated. It is admitted that if the honorary trustee does not choose to fulfil his trust, he should become constructive trustee for the testator's next of kin, since the testator never intended him to receive the benefit, and next to the intended beneficiary the testator's next of kin have the best equitable right. But it would seem to be better justice and equally good law that where the trustee is willing to fulfil his duty he should not be interfered with.

In most jurisdictions an exception to this doctrine of *Morice* v. *Bishop of Durham* is taken in the case of charitable trusts. Even in New York the exception is now established by statute. The place of the *cestui que trust* is assumed by the State. In Massachusetts and Pennsylvania a bequest for masses is held to come within this exception. But elsewhere, on the theory of *Morice* v. *Bishop of Durham*, a bequest for masses is void, except in Ireland, where by numerous decisions the trustee is allowed to fulfil the trust. In England such a bequest is void as a superstitious use (1 Ames's Cas. on Trusts, 210, 211); yet a gift *inter vivos* upon trust for masses is in general valid, even in New York, where *Morice* v. *Bishop of Durham* is in other respects followed to the bitter end. In addition to these departures from *Morice* v. *Bishop of Durham*, there are several groups of cases indistinguishable from it in principle, in which equity judges have declined to prevent the performance of a purely honorary trust. Such cases are those of bequests in trust for erection

of monuments, maintenance of pet animals, and transportation and liberation of slaves.

Both on principle and on the authority of the adverse decisions, the doctrine of *Morice* v. *Bishop of Durham*, it is submitted, ought not to be followed except in jurisdictions absolutely bound by their own precedents. The court should interfere at the instance of the testator's next of kin only where there has been a failure or refusal to perform the imposed duty. See 5 HARVARD LAW REVIEW, 389–402.

PURCHASE OF OUTSTANDING TITLE BY A TENANT IN COMMON. — In *Van Horne* v. *Fonda*, 5 Johns. Ch. 388, Chancellor Kent declared that it was inconsistent with good faith and the mutual obligations arising from community of interest for one tenant in common to purchase an outstanding paramount title for his exclusive benefit, and that he did not propose to sanction it. Thus was laid the foundation of a rule which has since become well settled in our law. Whatever title is so acquired inures equally to the benefit of the cotenant, provided only the latter elects, within a reasonable time, to accept it and bear his portion of the expense. Courts follow the lead of the distinguished Chancellor in finding a reason for the rule in the relations of mutual trust and confidence created by joint interest in a common subject. That there may well be cases of cotenancy where no such relation in fact exists, has always been recognized (see *Van Horne* v. *Fonda, supra*), and accordingly an exception, which two recent cases illustrate, has grown up beside the rule. In *Stevens* v. *Reynolds*, 41 N. E. Rep. 931, the Indiana court held that the rule does not apply where the original interests of the cotenants were acquired under different instruments, from different sources, and at different times; and the Texas court, in *Fielding* v. *White*, 32 S. W. Rep. 1054, reached a similar conclusion, laying stress on the additional fact that there had never been any understanding between the parties concerning their interests in the land. Both courts base their conclusions on the absence of that relation of mutual trust on which Chancellor Kent founded his rule, and the results reached are in accord with the weight of authority. *Elston* v. *Piggott*, 94 Ind. 14; *Roberts* v. *Thorn*, 25 Tex. 728; *King* v. *Rowan*, 10 Heisk. 682; Freeman on Cotenancy and Partition, § 155. *Contra*, *Bracken* v. *Cooper*, 80 Ill. 229.

The doctrine laid down in these cases certainly seems unexceptionable. But the general rule itself, to which they establish an exception, though unassailable in point of authority, appears to be somewhat objectionable in principle. Apart from special circumstances, what relation of trust exists between tenants in common which the law can recognize? They may in general deal with each other as with strangers. One may drive as sharp a bargain as he pleases in buying out the other's interest. Unfair and dishonorable as it may often be for one to oust the other by the purchase of a superior outstanding title, it is hard to see what principle of law there can be to forbid it. If, indeed, the tenants are partners, or if one is given charge of the common property by the others, or any other circumstances exist which give rise to a real fiduciary relation between them, the courts may well regard the act under discussion as a breach of obligation. But the bare fact of tenancy in common, where there is actually no relation of mutual confidence, should entail no such consequences.